## REMARKS

The Final Office Action dated March 24, 2004 rejected claims 1 and 2 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,137,789 to Honkasalo (hereinafter "Honkasalo"). Claim 3 was rejected under 35 U.S.C. § 103(a) as being obvious in light of U.S. Patent 6,137,789 to Honkasalo.

## Claim Rejections under 35 U.S.C. § 102

Claims 1 and 2 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Honkasalo.

To anticipate a claim, the prior art reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants respectfully submit that claims 1 and 2 are not anticipated by Honkasalo for the reason and explanations provided below.

Applicants respectfully submit that Honkasalo does not disclose the limitation "a method for transmitting data using a single channel" as found in amended claim 1.

Honkasalo discloses a mobile station that is able to determine a required data rate based on data buffer usage. (Abstract). A high speed mobile station requests a number of parallel code channels based on the amount of data stored in a transmit data buffer. (Col. 5, lines 58-60). The base station then assigns a number of parallel code channels up to a maximum number, for a given period of time. The number of channels is also based on the current interference condition in the network. (Col. 5, lines 60-64). The time period is a network parameter and is explicitly signaled to the mobile station by the base station. (Col. 5, lines 65-67). The mobile then proceeds to transmit on all assigned code channels. (Col. 6, lines 1-2). Applicants respectfully submit that Honkasalo does not disclose "a method for transmitting data using a single channel," as found in amended claim 1.

Applicants also submit that claims 2 and 3 are allowable as depending from an allowable base claim.

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**PATENT** 

Claim Rejections under 35 U.S.C. § 103

To establish a prima facie case of obviousness, the prior art reference (or references when

combined) must teach or suggest all the claim limitations. "The teaching or suggestion to make

the claimed combination and the reasonable expectation of success must both be found in the

prior art, not in Applicants' disclosure." In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir.

1991).

Applicants respectfully submit that claim 3 is allowable for the same reasons as given

above for claim 1.

Additionally, Applicants submit that Honkasalo teaches away from the method used in

claim 3. Honkasalo teaches establishing multiple channels for a high data rate transmission and

does not address frame structures used within a single channel. Thus, the reference teaches away

from Applicants' disclosure.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are

patentable. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned

at the number provided below.

Respectfully submitted,

Dated:

May 24, 2004

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